

## SENATE BILL NO. 477

INTRODUCED BY G. JERGESON, WATERMAN, BISHOP, CHRISTIAENS, E. CLARK, GLASER, GRIMES,  
LAWSON, NELSON, SCHRUMPF, B. THOMAS

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR USE OF SAFETY DEVICES IN LONG-TERM  
CARE FACILITIES UPON A REQUEST AND RECEIPT OF WRITTEN INFORMED CONSENT; DEFINING  
TERMS; PROVIDING FOR LONG-TERM CARE FACILITY PROCEDURES AND WRITTEN PHYSICIAN OR  
ADVANCED PRACTICE REGISTERED NURSE ORDERS; ~~AND~~ PROVIDING THAT A WRITTEN PHYSICIAN'S  
OR ADVANCED PRACTICE REGISTERED NURSE'S ORDER PROVIDES EVIDENCE OF MEDICAL NECESSITY  
FOR THE USE OF A SAFETY DEVICE; AND GRANTING THE DEPARTMENT OF PUBLIC HEALTH AND  
HUMAN SERVICES RULEMAKING AUTHORITY."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION. Section 1. Use of safety devices -- request and consent -- allowed individuals --**  
**intent.** (1) The following individuals may request the use of and provide informed consent for the use of  
certain safety devices aimed at ensuring the physical safety of the resident by reducing the risk of falls  
and injuries associated with a resident's medical symptom even if the resident cannot easily remove the  
device or the device restricts the resident's total freedom of movement:

(a) a resident;

(b) a family member of a resident who ~~has been declared incompetent or~~ is unable to make  
decisions BECAUSE THE RESIDENT HAS A COMMUNICATION BARRIER OR HAS BEEN FOUND BY A PHYSICIAN TO BE  
MEDICALLY INCAPABLE OF GRANTING INFORMED CONSENT, AS PROVIDED IN [SECTION 3];

~~—— (c) an individual designated to make decisions regarding life-sustaining treatment pursuant to~~  
~~50-9-103;~~

~~(d)(c)~~ a conservator or guardian, as defined in 72-1-103; or

~~(e)(d)~~ a person granted the power of attorney, ~~either generally or~~ for health care decisions.

(2) A concern for a resident's physical safety or a resident's fear of falling may provide the basis  
for a medical symptom. A safety device may not be used for the convenience of staff or for disciplinary  
purposes.

(3) [Sections 1 through 5] are intended to provide residents and authorized or designated representatives with the authority to request and consent to the use of safety devices but are not intended to interfere with the right of licensed health care providers acting within their scope of practice to recommend and order treatments and services, including physical restraints, for residents in their care.

**NEW SECTION. Section 2. Definitions.** As used in [sections 1 through 5], the following definitions apply:

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) "LONG-TERM CARE FACILITY" MEANS A LICENSED FACILITY THAT PROVIDES SKILLED NURSING CARE OR INTERMEDIATE NURSING CARE OR THAT IS A PERSONAL-CARE FACILITY, AS DEFINED IN 50-5-101.

~~(2)(3)~~ "Medical symptom" means an indication of a physical or psychological condition or of a physical or psychological need expressed by the patient.

(4) "PHYSICIAN" INCLUDES AN ADVANCED PRACTICE REGISTERED NURSE TO THE EXTENT PERMITTED BY FEDERAL LAW.

~~(3)(5)~~ "Resident" ~~has the meaning provided in 50-5-1103.~~ MEANS A PERSON WHO LIVES IN A LONG-TERM CARE FACILITY.

~~(4)(6)~~ (a) "Safety devices" means side rails, tray tables, seatbelts, and other similar devices.

(b) The term does not include protective restraints as defined in 21 CFR 880.6760.

**NEW SECTION. Section 3. Procedures -- informed consent -- physician involvement.** (1) Upon receiving a request for use of a safety device, a long-term care facility shall inform the requestor of the alternatives and risks associated with the use of the safety device. The long-term care facility shall provide the requested safety device to the resident upon receipt of:

(a) a signed consent form authorizing its use and acknowledging receipt of specific information about available alternatives and risks; and

(b) a written order from the attending physician that specifies the circumstances under and the duration for which the safety device may be used and the medical symptoms that the safety device is intended to address.

(2) The requirements of subsection (1) do not apply if a side rail or other device is used only as

an assistive device and does not restrict the resident's movement from bed or chair.

**NEW SECTION. Section 4. Long-term care facility procedures.** A long-term care facility that provides a safety device under [section 3] shall:

- (1) document that the procedures outlined in [section 3] have been followed;
- (2) monitor the use of the safety device in accordance with accepted standards of practice;
- (3) reevaluate the resident's need for the safety device, no less than quarterly, in consultation with the resident, the resident's family, and the attending physician.

**NEW SECTION. Section 5. Survey compliance and department enforcement -- RULEMAKING AUTHORITY.** (1) THE DEPARTMENT IS GRANTED RULEMAKING AUTHORITY FOR THE PURPOSES OF IMPLEMENTING [SECTIONS 1 THROUGH 5].

~~(1)(2)~~ When determining compliance with state and federal standards for the use of a safety device, the department is bound by the statements and determinations contained in the attending physician's order regarding medical symptoms. A written order from the attending physician that contains statements and determinations regarding medical symptoms is sufficient evidence of the medical necessity of the safety device.

~~(2)(3)~~ A long-term care facility may not be subject to fines, civil penalties, or other state or federal survey enforcement remedies solely as the result of allowing the use of a safety device as authorized in [sections 1 through 5].

~~(3)(4)~~ This section does not preclude the department from taking action to protect the safety and health of the resident if there is clear and convincing evidence that:

- (a) the use of the safety device has jeopardized the health and safety of the resident; and
- (b) the long-term care facility has failed to take reasonable measures to protect the health and safety of the resident.

**NEW SECTION. Section 6. Codification instruction.** [Sections 1 through 5] are intended to be codified as an integral part of Title 50, chapter 5, and the provisions of Title 50, chapter 5, apply to [sections 1 through 5].

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